IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 907 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALLARKHA MAMAD DAFER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 907 of 1997

MR BS SUPEHIA for Petitioner No. 1

MR HM PRACHHAK Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The appellant-accused - Allarakha Mamad Dafer has, challenged the impugned judgment and order of conviction and sentence dated 27.8.1997 passed by the ld. Addl. Sessions Judge, Junagadh in Sessions Case No. 49/1996, convicting him for the offence under sec. 302 IPC for committing murder of his wife Jenu and sentenced him to suffer life imprisonment and to pay fine of Rs. 5000/-, in default, to further undergo two years R/I, out of which, Rs. 4000/- was ordered to be paid to the complainant and Kheru - daughter of the deceased, as compensation.

The incident in question took place on 31.10.1993 at about 6.00AM in the house of complainant - Ranbai Noormamad, PW-2, Ex.10. The accused is son-in-law of complainant Ranbai, whereas deceased Jenu was the real daughter of complainant Ranbai and wife of the accused. They got married before 15 years. Prior to the date of incident, the accused was in jail for a period of almost three years in connection with another offence. Just 10 days before the incident, he was released from the jail. On the previous afternoon, the accused left the house of the complainant and returned early in the morning at about 6.00AM on the next day i.e. on 31.10.1993. At that time, his wife Jenu was sleeping. He started abusing her. The complainant tried to intervene, thereupon, he got excited and took out iron Kosh about 91 cm length lying in the Chowk of the house and gave blow on the head of the deceased Jenu. On hearing her shout, Osman, grand-son of complainant and son of Kalu, came running there. At that time, accused gave another blow on the head of the deceased Jenu and, thereafter, leaving the Kosh there, he ran away. The incident was witnessed by the complainant, Kheru - daughter of accused who were present in the house at the time of incident. They found Jenu died on the spot, therefore, complainant immediately sent Osman to the house of Misari Hasam, another son-in-law of the complainant. He came within no time. She told about the incident to her son-in-law Misari Hasam. Then, at about 9.45AM, they went to Vanthali Police Station and lodged FIR about the incident. After completing the investigation, the police filed the charge-sheet against the appellant-accused for committing murder of his wife for the offence under sec. 302 IPC. The Ld. Magistrate committed the case to the Court of Sessions. Before the Ld. Addl. Sessions Judge, the prosecution examined several witnesses. Ranbai Noormamad PW-2, Ex. 10, Kheru daughter of accused Allarakha PW-3 Ex. 23 and other witnesses. Considering the evidence of prosecution witnesses and the defence of the accused, the

Ld. Judge came to the conclusion that the prosecution has proved its case against the accused beyond reasonable doubt. Therefore, he convicted accused for committing murder of his wife Jenu for the offence under sec. 302 IPC and sentenced him to suffer life imprisonment. This has been challenged in this appeal.

We have been taken through the evidence of the prosecution witnesses.

Dr. Vallabhgar Gopalgar Goswami, PW-1, Ex. 7, has stated in his evidence that on 31.10.1993, at about 11.20AM, dead-body of Jenu was brought. On examination, he found two injuries on the head; (i) cut wound of 1 & 1/2 x 1.3 inches bone deep on the right parietal region and (ii) 1 & 1/2 x 1.3 inches bone deep on the head. Both the injuries were prior to the death and sufficient in ordinary course to cause death. He has also proved the Postmortem Note at ex. 11. Cause of death was due to serious injuries received by the deceased on her head and due to shock, she had died. He has stated that the said injuries were possible by iron Kosh, muddamal Article No. 3. In cross-examination of the accused, he stated that the injuries were prior to six hours of the postmortem. He has categorically stated that the injury no. 1 mentioned in column no. 17 in postmortem note was sufficient in ordinary course to cause death. He has clearly denied the suggestion made by the advocate of the accused that they were self inflicted injuries or that the said injuries were possible due to fall.

Complainant - Ranbai Noormamad, aged 60 years, is the mother of the deceased Jenu and mother-in-law of accused Allarakha. She has stated in her evidence that marriage of her daughter Jenu took place with accused Allarakha before 15 years of the incident. One year prior to the death, her daughter was staying with her because her husband was in jail. Before the death of her daughter, the accused came just before 15 to 20 days from jail and stayed with them. Since last 10 days of the incident, he was quarreling with her daughter and having false doubt about the character of her daughter. When the incident in question took place, she along with Kheru daughter of her daughter, who is physically handicapped, were present in the house. At about 6.00AM or 6.30AM, the accused - Allarakha came there, before that they had tea. When accused came, her daughter was sleeping. Accused awoke her and started giving filthy abuses. She (complainant) told the accused not to abuse her daughter. At that time, the accused took out iron Kosh lying nearby and first gave blow on the head near the ear of Jenu and

another blow was given on the head and because of that, Jenu fell down with blood coming out of her head. At that time, her grand-son Osman came with his wife Zarina. After giving blows to her daughter, the accused ran away by throwing the iron Kosh out side the compound. She sent Osman to call her eldest son-in-law- Misari staying at Dilavarnagar, near Vanthali. After he came, they went to the police station and lodged the complaint (Ex. 31). She has two sons, both of them have died. Osman is the son of her deceased son Kalu, who is also married and staying at some distance from her house. She had identified the muddamal Article No. 3 iron Kosh used by the accused at the time of commission of offence.

In her cross-examination, she has stated that she has to go to her eldest son-in-law's house quite often. Accused was in jail since long because of the previous case filed against him. She has denied that her daughter was staying all alone because the accused was in jail since last three years of the incident. She has stated in her cross-examination that after the accused was released from jail, he was called by the police quite often for interrogation. On the previous day also, police took the accused along with them for the purpose of interrogation and he returned to home on the next day early in the morning. She has categorically denied that the accused never returned to her house on the next day morning when the incident in question took place. She has also denied that at the time of incident, the accused was in police station. Thus, nothing substantially has come out in her cross-examination except that there is some discrepancy in her evidence regarding one blow given above the ear of the deceased Jenu and that the accused ran away after throwing muddamal iron Kosh out side the compound. Thus, there are some minor discrepancies, but it should not come in the way of prosecution. Such minor discrepancies are bound to be there in every case. It has also come out in her cross-examination that prior to the incident, the accused was quarreling with her daughter Jenu quite often and also beating her and because of that, she has lodged a complaint against the accused twice. It is a different thing that the same has not come on the record. It is pertinent to note that she has clearly denied the suggestion made to her in her cross-examination that because the accused was in jail since long, therefore, deceased Jenu tired of her life and inflicted self injuries on her head with iron Kosh and, thereby, she committed suicide. She has also denied the suggestion that because her relations were strained with the accused, therefore, on the death of her daughter, she has filed false complaint against the

accused.

Kheru Allarakha, PW-3 ex. 23, is none else but the real daughter of the accused. She was 16 years old at the time of incident. She is handicapped with one lag. She was staying with her deceased mother Jenu at the house of her grand-mother Ranbai because her father -accused Allarakha was in jail for quite some time in another case. She has clearly supported the prosecution case and nothing has come out in her cross-examination. She has also witnessed the incident and stated that her father- accused was keeping false doubt in his mind about the character of her mother and killed her mother. In her cross-examination, she has clearly stated that the relations between her father and her maternal uncle Misari were strained. She has candidly admitted that she loved her mother but did not like her father because he was in jail. She has clearly denied in her cross-examination the suggestion made by the accused that at the instance of her grand-mother (Nani) Ranbai, she was falsely deposing against the accused.

It is true that Ranbai Noormamad was none else but mother of deceased Jenu, therefore, we have closely examined her evidence. She may have some grievance with the death of her daughter, but her overall evidence shows that she was not lying and she had not tried to falsely involve the accused because of their strained relations. Kheru is the daughter of deceased Jenu as well as the accused Allarakha. She had no grudge against her real father. If she had not witnessed the incident, then she would not have tried to falsely implicate his father. It may be that she did not like his father that fact itself would not be sufficient to discard her evidence. In fact, in a most natural manner she has deposed. Once we relied upon the prosecution evidence, then there is no question to go through other evidence. Their evidence is duly corroborated by the medical evidence. The iron Kosh recovered at the instance of the accused was having blood which is of B-group of the deceased. All the evidence available on record can lead to only one conclusion that it was the accused alone, who committed the murder of his wife.

In view of the above evidence and in view of the reasons assigned by the ld. Judge for convicting the appellant-accused for the offence under sec. 302 IPC, we have no option but to dismiss the appeal.

In view of the above, this appeal fails and is hereby dismissed.

(B.J. SHETHNA, J.)

(J.R. VORA, J.)

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